

"Useful guidance on how the mind and will of a company may be manifested is also to be found in the judgment of Denning L.J. in *Bolton (H.L.) Engineering Co. Ltd. v. T. J. Graham & Sons Ltd.*<sup>(7)</sup> where he said: A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So that you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* A little later Denning L.J. said: 'So here, the intention of the company can be derived from the intention of its officers and agents. Whether their intention is the company's intention depends on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case'."

In the instant case the negligence which occasioned the loss may fairly be described as remissness in the performance of routine duties by the chief tally clerk, the wharf foreman and perhaps the watchman or guards on night duty at the wharf. A spate of goods being landed at the relevant time to meet the demands of the Christmas, Chinese New Year and Hari Raya celebrations doubtless accounted for relaxation from strict routine precautions. Once these facts are appreciated I do not think the difficulty arises (as it did in *The Lady Gwendolen* and other cases referred to therein) of drawing the line between the fault or privity of somebody who is merely a servant or agent for whom the company is liable on the footing of *respondent superior* and the fault or privity of one whose action is the very action of the company itself, to paraphrase what Lord Haldane said in *Lennard's* case. Consequently, I think the defence of limitation of liability succeeds.

In this connection I am of the opinion that regulation 16 has not been repealed by section 57 of the Port Authorities Act, 1963. The proviso to that section is not happily worded; nevertheless, the reference to "tariffs and charges" only in the latter part thereof does not, in my view, have the effect, as it were, of erasing the word "regulations" appearing earlier in the same proviso.

One minor problem, however, now arises which I think was due to oversight. In the further and better particulars of paragraphs 2 of the defence it was stated that the lighter No. S. 66 had a tonnage of 60 tons and that the total of claims received in connection with the theft of cargo therefrom amounted to \$63,129.27, with the result that the plaintiffs would be entitled to a sum of \$1,706.85 only on calculation. The

A plaintiffs had joined issue with the defendants on their defence and there was neither admission by the plaintiffs nor proof by the defendants of the tonnage of the lighter and the aggregate of claims they received. The onus, of course, lay with the defendants when they relied on regulation 16.

B I am, therefore, compelled to do the best I can in the circumstances when it comes to assessment of the quantum of damages. The Port Swettenham Tariff Book No. 1 was referred to by both parties. On page 27, the subject of which was lighter hire and demurrage, only two types of lighters were specified, one of 60 tons and the other 100 tons. I think it is but fair to take the latter, since the fault lay with the defendants in failing to prove the tonnage of S. 66. There is no evidence whatsoever on the other alleged claims. In the result judgment will be entered for the plaintiffs in the sum of \$6,000, at the rate of \$60 per ton for 100 tons, interest at 6% from December 23, 1963 and costs.

*Judgment for the plaintiffs.*

Solicitors: *Shearn, Delamore & Co.; Skrine & Co.*

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## LIM TING HONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) April 4, 1966]

[Singapore — Magistrates Appeal No. 85 of 1965]

F *Societies — Triad society — Possession of writings relating to — Evidence of expert — Societies Ordinance (Cap. 228), s. 16(2).*

G The appellant was found guilty of possession of writings relating to a triad society. The expert gave evidence that the poems found in the possession of the appellant related to the *Ang Bin Hoay* triad society. On appeal it was contended that the evidence should have been analysed by the district judge and as he had failed to do so, the conviction should be set aside.

Held: this was a pure and simple case of possession and on the facts the district judge had found that the appellant was in possession of the poems, which were shown to relate a triad society, and therefore the appellant was correctly convicted.

Case referred to:—

(1) *Tan Ah Leng v. R.* [1957] M.L.J. 36.

## CRIMINAL APPEAL.

*Kumar Lal* for the appellant.

*P. Ganesan* (Deputy Public Prosecutor) for the respondent.

I Winslow J.: The appellant was originally charged in 2nd Criminal District Court Case No. 164 of 1964 with being found to possess writings relating to a triad society, an offence punishable under section 16(2) of the Societies Ordinance (Cap. 228) (hereinafter referred to as "the Ordinance"), and secondly with being a member of an unlawful society, an offence punishable

under section 12(1) of the same Ordinance. He was acquitted at the end of the prosecution case by the learned district judge who was unable to hold that the two poems (Exhibits P3 and P4) which were said to have been found in the appellant's possession were exclusively triad society writings.

The evidence was to the effect that these two writings were poems used by the *Ang Bin Hoey* triad society as part of its ritual but, as the expert went on to say that he was unable to state whether there was a possibility of other societies using the same poems as part of their ritual, the learned district judge decided that these two poems were not writings of or relating to any triad society within the meaning of section 16(2) of the Ordinance since they did not relate exclusively to the *Ang Bin Hoey* triad society.

On appeal by the public prosecutor, Buttrose J. remitted the case back to the learned district judge to call upon the defence of the appellant expressing the view that the second charge relating to membership of the triad society should not be proceeded with. This charge was subsequently withdrawn and the appellant was therefore, on remission, merely concerned with the first charge relating to possession of the two poems. On being called upon for his defence the appellant gave evidence on oath which the learned district judge rejected in so far as he disputed knowing anything about these two poems and he was accordingly convicted.

In his appeal against conviction the appellant relied on the following main grounds:—

(i) That the learned district judge erred in law in finding that he had possession, custody and control of the two poems.

(ii) That the poems in question were not triad society writings in 1964 since the expert had dissociated himself from the *Ang Bin Hoey* triad society in 1953.

(iii) That the poems did not exclusively relate to a triad society.

(iv) That the learned district judge did not analyse the evidence given by the appellant before rejecting it, as he should have done.

To take ground (ii) first, I think that there is little merit in the complaint that the expert's evidence was insufficient to prove that the poems did relate to the *Ang Bin Hoey* triad society. Although the expert gave evidence in 1964 and had ceased to participate actively as a member of that triad society after 1953 he was able positively to state that these poems did, in fact, belong to the *Ang Bin Hoey* triad society and that the name *Ang Bin Hoey* could be read on the documents. The expert has given evidence relating to this society ever since 1953 and has been accepted as an expert by the courts both in Malaya and Singapore. He stated that triad societies started in China 311 years earlier and

A that they had spread to Malaya later. In his 20 years' experience whilst associated with triad societies he had not noticed any change in their ritual and he went on to state that all the instructors in triad societies had to perform ceremonies according to the rules, thereby in effect stating that any change in ritual was most unlikely. In my opinion there is no merit in the contention that the ritual described has, in some way or other, become altered during the years subsequent to 1953. A rite or ritual ordinarily requires conformity to some prescribed procedure usually hallowed by custom or usage. In my opinion the expert's evidence, to which I have referred, showed that the ceremonies of the *Ang Bin Hoey* triad society are conducted in accordance with prescribed rules and this ground accordingly fails.

With regard to ground (iii), the fact that the expert was unable to say whether other societies were capable of using the same ritual does not thereby affect the value of his evidence connecting these poems with the *Ang Bin Hoey* triad society. Mr. Kumar Lal, for the appellant, contended that if some society were innocently to use a triad ritual then that society would not be doing anything contrary to the law. He seems to have overlooked section 16(1) of the Ordinance which provides that every society which uses a triad ritual shall be deemed to be an unlawful society. It, therefore, follows that use of a ritual by a triad society need not be proved to be exclusive. If other societies adopt that ritual they will also fall foul of the law.

It now remains for me to consider the main complaints, i.e. that possession of these poems by the appellant had not been proved and that the appellant's evidence had not been analysed by the learned district judge.

The second charge against the appellant had already been withdrawn and he was no longer in peril of any presumption arising under section 15(1). He had already been acquitted on that charge of being a member of a triad society. The charge on which he was convicted under section 16(2) does not require the invocation of any presumption such as that contained in section 15. It is a straightforward charge of being found in possession of or having the custody and control of any writings of or relating to any triad society. In this particular instance the appellant was charged with being found in possession of poems relating to the *Ang Bin Hoey* triad society. In my opinion there is ample evidence that he was so found in possession. He was clearly at least in custody of these poems and on the evidence before him the learned district judge was entitled to conclude that such custody was accompanied by guilty knowledge of the nature of the articles. The appellant gave evidence that he found Exhibit P3 on the seat

next to him when he reached the C.I.D. with the police party. The learned district judge was entitled to reject this in view of the fact that the evidence showed that the said seat had been occupied by the police inspector in charge of the case immediately before the taxi reached the C.I.D. The other poem (Exhibit P4) was clearly found in his wallet. His conduct at the time he was seen holding Exhibit P3 in his hand also clearly indicated a guilty state of mind.

In my opinion it was not essential for his evidence to be analysed by the learned district judge as counsel contended should have been done on the authority of *Tan Ah Leng v. R.*<sup>(1)</sup> In that case the appellant had a tattoo mark of a secret society on his right arm. It should be noted that in that case Rigby J. was concerned with a case which involved a charge of being a member of an unlawful society where the prosecution had to depend on a presumption which is the equivalent of that contained in our section 15(1). Rigby J. no doubt stated that the learned magistrate in that case had made no attempt to analyse the defence story nor to set out the grounds upon which he considered that the defence had failed to rebut the presumption placed upon it. In the present appeal the prosecution were not concerned with any presumption or with proof of the appellant's being a member of any unlawful society. This was a pure and simple case as to whether the appellant was found to be in possession of these two poems. His defence was a bare denial of any knowledge of the existence of these poems and in the circumstances there was little in that evidence for the learned district judge to analyse although perhaps his reasons could have been stated more fully. In my opinion the appellant was correctly convicted.

I now turn to the question of the second charge on which he was acquitted of being a member of the *Ang Bin Hoey* triad society. I think I ought to mention that, in my opinion, the appellant is fortunate in that the charge against him was withdrawn. Apparently the reason for the withdrawal lies in the fact that the expert was asked whether he could say that the appellant was a member of the *Ang Bin Hoey* triad society. In reply, the expert said that he could not. In my opinion, the expert should not have been asked whether the appellant was a member of the *Ang Bin Hoey* triad society or not, as this was a matter which the court itself had to determine on the evidence of the finding of the writings in his possession and after considering the presumption arising under section 15(1) and the case as a whole. The expert was in no position to say whether or not the appellant was such a member. What he could and did say was that these poems were used by the *Ang Bin Hoey* triad society as part of its ritual.

A He could usefully have said nothing more on this subject.

A conviction for being found in possession of these poems under section 16(2) carries alternative penalties, i.e. a fine not exceeding \$3,000 or imprisonment for a term which may extend to 3 years. He may be liable to both. As, however, he has been acquitted on the charge of membership of the society in question I think that I should impose the lesser punishment of a fine instead of confirming his sentence of imprisonment for 6 months. I accordingly substitute a fine of \$1,500 or 6 months' imprisonment in default instead of the sentence of 6 months' imprisonment.

*Appeal dismissed. Sentence reduced.*

Solicitors: *Lee & Lee.*

## D RESHTY v. SYED AHMED AL-JUNIED & ORS.

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 6, 1966]

[Singapore — Federal Court Civil Appeal No. 111 of 1964]

*Landlord and Tenant — Premises — Meaning of — Whether person who holds over after termination of contractual tenancy is a trespasser — Statutory tenancy — Order for mesne profits — Control of Rent Ordinance (Cap. 242), s. 15(1)(g).*

This was an appeal from the judgment of Choor Singh J. ([1965] 1 M.L.J. 77). The respondents had claimed possession of certain lands comprising an area of 550 acres on the ground that the appellant had been receiving from the sub-tenants substantially more than 110% of the rent which she herself paid to the respondents. The learned trial judge gave judgment for the respondents on the claim for possession. He also held that the appellant on the expiry of the notice to quit became a trespasser and was liable to pay *mesne profits* to the appellant as damages for the loss they suffered; and he assessed the damages as all the rents the appellant had collected from the sub-tenants from the date of expiry of the notice to quit up to the date of the judgment.

**Held:** (1) the learned trial judge was correct in coming to the conclusion that the lands demised to the appellant were "premises" within the meaning of section 15(1)(g) of the Control of Rent Ordinance and in making an order for possession against the appellant;

(2) the acceptance of rent by respondents "without prejudice to the notice to quit" did not constitute a waiver by the respondents of their right to treat the appellant as a trespasser;

(3) the appellant could not be treated as a trespasser until an order for possession had been made against her and therefore the order for the payment of *mesne profits* must be set aside.

[Editorial Note: The Honourable the Lord President who presided at the hearing of the appeal did not sit in the Federal Court when it delivered the reserved judgment in Singapore.]

Cases referred to:—

(1) *Segal Securities Ltd. v. Thoseby* [1963] 2 W.L.R. 403.

(2) *Matthews v. Smallwood* [1910] 1 Ch. 777.

(3) *Ida Fernandez v. Murugiah* [1950] M.L.J. 83.